JOBNAME: No Job Name PAGE: 1 SESS: 1 OUTPUT: Thu Dec 18 13:12:47 2014

Rim Alliance Inc Sdn Bhd v Haniffa Properties Sdn Bhd

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-02–3060 OF 2010

ABDUL AZIZ AB RAHIM, MOHAMAD ARIFF AND DAVID WONG JJCA

21 JUNE 2013

Contract — Formation — Agreement — Whether concluded agreement between parties existed — Whether existence of dispute over completion date of transaction and seller's change of mind to supply relevant documents requested by buyer only after sale and purchase agreement signed showed absence of consensus ad idem — Whether seller's failure to forward to buyer relevant documents concerning subject property entitled buyer to conclude no binding agreement come into being

The appellant entered into negotiations with the respondent to buy the latter's five-storey building ('the property'). Following the negotiations, the appellant's solicitors by letter dated 7 May 2009 to the respondent's solicitors confirmed that the purchase price would be RM19m and requested sight of various documents including a certified copy of the title, the respondent's resolution to the sale of the property, copies of its Forms 24 and 49 under the Companies Act 1965 and copies of its tenancy agreements with the existing tenants on the property. In their reply, the respondent's solicitors, captioning their letter as 'strictly subject to contract', pointed out that the sale was subject to terms and conditions being agreed upon and a formal sale and purchase agreement ('SPA') being executed. The solicitors undertook to forward the documents asked for once the appellant had deposited with them as stakeholders 2% of the sale price (RM380,000) as forfeitable earnest deposit. The appellant complied with that condition. Thereafter, although the appellant's solicitors had requested for various documents in order to conduct a due diligence exercise, this was not forthcoming from the other party. On 9 July 2009, the appellant's solicitors informed the respondent's solicitors that the appellant had deposited with them the balance monies to make up 10% of the purchase price and asked for the SPA and all related documents to be sent to them for the appellant's execution. The respondent's solicitors forwarded four sets of the SPA and deed of assignment for execution but as there was no response thereto despite reminders, the solicitors gave an ultimatum that the earnest deposit would be forfeited if the documents were not signed and returned. The appellant's solicitors maintained that no binding agreement between the parties had come into being on account of the respondent's failure to supply the documents asked for and demanded that the earnest deposit be returned. The High Court upheld the respondent's claim that it was entitled to forfeit that sum due to the

JOBNAME: No Job Name PAGE: 2 SESS: 1 OUTPUT: Thu Dec 18 13:12:47 2014

appellant's purported failure to proceed with the SPA. The court found there was a concluded agreement between the parties; that whilst the earlier letters of the respondent bore the caption 'subject to contract', the appellant's solicitor's letter of 9 July 2009 did not have that caption and its contents showed the appellant was unequivocally and unconditionally ready to execute the SPA without specifying any term or condition that had yet to be agreed upon. The court held the contents of that letter did not contemplate the execution of a further contract or give the inference that anything more needed to be done to conclude the contract. The issue for determination in the instant appeal was whether there was a concluded agreement between the parties.

Held, allowing the appeal with costs of RM20,000 for here and below:

(1) There was no concluded agreement between the parties. The appellant's solicitor's letter of 9 July 2009 had to be looked at in the context of all the other correspondence. It was undisputed that the appellant had from day one wanted to be supplied with the documents set out in its first letter. It was common conveyancing practice that a purchaser was entitled to have relevant information relating to a property which was within the purview of the vendor. In fact, the respondent in the 7 May 2009 letter undertook that the documents would be supplied once the 2% earnest deposit was paid; which sum was paid (see paras 20 & 24).

(2) The court could not understand why copies of the tenancy agreements relating to the property were not supplied to the appellant as knowledge of the terms and conditions of tenancies was pivotal to whether the SPA would be proceeded with. Disclosure in the draft SPA could not be equated with supplying copies of the tenancy agreements. The appellant as the prospective purchaser had to know the full terms and conditions of the tenancy agreements (see para 22).

(3) There was no evidence to infer that the supply of the documents requested for had been waived by the appellant. As pointed out in the appellant's solicitor's letter of 29 July 2009, there was dispute as to the completion period of three months set out in the draft SPA and the respondent had also had a change of mind to supply the requested documents only after the SPA had been signed. These disputes showed there still had not been a meeting of minds. Considering the transaction involved RM19m, no reasonable commercial enterprise would have bound itself until a formal agreement had been executed. The caption 'strictly subject to contract' in the respondent's solicitor's letters prior to 10 July 2009 showed that the respondent intended from the very outset that for any agreement to come into effect there had to be a formal agreement (see paras 16, 18 & 23).

JOBNAME: No Job Name PAGE: 3 SESS: 1 OUTPUT: Thu Dec 18 13:12:47 2014

[Bahasa Malaysia summary

Perayu telah mengadakan beberapa rundingan dengan responden untuk membeli bangunan lima tingkat responden ('hartanah tersebut'). Berikutan rundingan tersebut, peguam cara perayu melalui surat bertarikh 7 Mei 2009 kepada peguam cara responden telah mengesahkan bahawa harga belian adalah RM19 juta dan memohon untuk melihat pelbagai dokumen termasuk salinan sah hakmilik, resolusi responden berhubung jualan hartanah tersebut, salinan borang-borang 24 dan 49nya di bawah Akta Syarikat 1965 dan salinan perjanjian-perjanjian sewanya dengan penyewa-penyewa sedia ada berhubung hartanah tersebut. Dalam jawapan mereka, peguam cara responden, dengan memberi tajuk surat mereka sebagai 'strictly subject to contract', menyatakan bahawa jualan itu adalah tertakluk kepada terma dan syarat yang dipersetujui dan perjanjian jual beli rasmi ('PJB') yang dilaksanakan. Peguam cara berjanji untuk mengemukakan dokumen-dokumen yang diminta selepas perayu mendepositkan dengan mereka sebagai pihak berkepentingan 2% daripada harga jualan (RM38,000) sebagai deposit cengkeram yang boleh dilucut hak. Perayu telah mematuhi syarat tersebut. Selepas itu, walaupun peguam cara perayu telah meminta pelbagai dokumen bagi tujuan menjalankan pelaksanaan ketekunan wajar, ini tidak dijangkakan daripada pihak lain. Pada 9 Julai 2009, peguam perayu telah memaklumkan peguam cara responden bahawa perayu telah mendepositkan baki wang untuk menjadi 10% daripada harga belian dan meminta untuk PJB itu dan semua dokumen berkaitan dihantar kepada mereka untuk pelaksanaan perayu. Peguam cara responden telah mengemukakan empat set PJB itu dan surat ikatan penyerahan hak untuk pelaksanaan tetapi oleh kerana tiada maklum balas meskipun peringatan diberikan, peguam cara itu telah memberi pilihan agar deposit cengkeram itu dilucut hakkan jika dokumen-dokumen itu tidak ditandatangani dan dikembalikan. Peguam cara perayu menegaskan bahawa tiada perjanjian terikat antara pihak-pihak oleh sebab kegagalan responden untuk membekalkan dokumen-dokumen yang diminta dan menuntut agar deposit cengkeram itu dikembalikan. Mahkamah Tinggi mengekalkan tuntutan responden bahawa ia berhak untuk merampas jumlah itu akibat kegagalan perayu untuk meneruskan dengan PJB tersebut. Mahkamah mendapati terdapat perjanjian yang disempurnakan antara pihak-pihak; bahawa di mana surat-surat awal responden mempunyai kapsyen 'subject to contract', surat peguam cara perayu bertarikh 9 Julai 2009 tidak mempunyai kapsyen itu dan kandungannya menunjukkan perayu aksa dan tanpa syarat bersedia menyempurnakan PJB tersebut tanpa dengan menetapkan apa-apa terma atau syarat yang masih belum dipersetujui. Mahkamah memutuskan kandungan surat tersebut tidak menjangkakan penyempurnaan kontrak selanjutnya atau memberi inferens bahawa apa-apa lebih daripada itu yang perlu dilakukan untuk menyempurnakan kontrak tersebut. Isu yang ditentukan dalam rayuan ini adalah sama ada terdapat perjanjian yang disempurnakan antara pihak-pihak.

JOBNAME: No Job Name PAGE: 4 SESS: 1 OUTPUT: Thu Dec 18 13:12:47 2014

Diputuskan, membenarkan rayuan dengan kos RM20,000 untuk mahkamah ini dan Mahkamah Tinggi:

(1) Tiada perjanjian yang disempurnakan antara pihak-pihak. Surat 9 Julai 2009 peguam cara perayu perlu dilihat dalam konteks semua hubungan lain. Tidak dipertikaikan bahawa perayu telah dari awal ingin dibekalkan dengan dokumen yang ditetapkan dalam surat pertamanya. Adalah amalan pindah hak biasa bahawa pembeli berhak mendapat maklumat relevan berkaitan hartanah dalam skop penjual. Bahkan, responden dalam surat 7 Mei 2009 mengakujanji bahawa dokumen itu akan dibekalkan selepas deposit cengkeram 2% dibayar; yang mana jumlah tersebut telahpun dibayar (lihat perenggan 20 & 24).

(2) Mahkamah tidak memahami kenapa salinan perjanjian sewa berkaitan hartanah itu tidak dibekalkan kepada perayu kerana pengetahuan berhubung terma dan syarat penyewaan adalah penting untuk sama ada PJB tersebut boleh diteruskan. Pendedahan draf PJB tersebut tidak boleh disamakan dengan membekalkan salinan perjanjian sewa itu. Perayu sebagai bakal pembeli perlu mengetahui semua terma dan syarat perjanjian sewa itu (lihat perenggan 22).

(3) Tiada keterangan untuk membuat inferens bahawa bekalan dokumen yang diminta telah diketepikan oleh perayu. Sebagaimana dinyatakan dalam surat peguam cara perayu bertarikh 29 Julai 2009, terdapat pertikaian berhubung tempoh siap tiga bulan yang ditetapkan dalam draf PJB tersebut dan responden juga telah menukar fikiran untuk membekalkan dokumen yang diminta hanya selepas PJB itu ditandatangani. Pertikaian ini menunjukkan masih tiada persetujuan. Berdasarkan transaksi yang melibatkan RM19 juta, tiada perniagaan komersial yang wajar akan mengikat dirinya sehingga perjanjian formal telah dilaksanakan. Kapsyen 'strictly subject to contract' dalam surat peguam cara responden sebelum 10 Julai 2009 menunjukkan bahawa responden berniat dari awal lagi agar apa-apa perjanjian yang berkuat kuasa hendaklah perjanjian yang formal (lihat perenggan 23, 18 & 16).]

Notes

For cases on agreement, see 3(3) *Mallal's Digest* (4th Ed, 2013 Reissue) paras 4609–4631.

Cases referred to

Ayer Hitam Tin Dredging Malaysia Bhd v YC Chin Enterprises Sdn Bhd [1994] 2 MLJ 754, SC (refd)

Charles Grenier Sdn Bhd v Lau Wing Hong [1996] 3 MLJ 327; [1997] 1 CLJ 625, FC (refd)

Vitol BV v Compagnie Europeeme des Petroles [1988] 1 Lloyds Rep 574 (refd)

JOBNAME: No Job Name PAGE: 5 SESS: 1 OUTPUT: Thu Dec 18 13:12:47 2014

Appeal from: Originating Summons No 5–24–2827 of 2009 (High Court, Kuala Lumpur)

Gurbachan Singh s/o Bagawan Singh (Bachan & Kartar) for the appellant.
HR Dipendra (Tengku Hishamudin Ram) for the respondent.

David Wong JCA (delivering judgment of the court):

INTRODUCTION

[1] This appeal is against the decision of the High Court in which the learned judge sustained the respondent's claim to a forfeiture of RM380,000 arising from the appellant's purported failure to proceed with a sale and purchase agreement of a property.

[2] We heard the appeal and having heard the submissions from respective counsel, we dismissed the appeal and now give our reasons.

FACTUAL BACKGROUND

[3] The respondent is the owner of a five storey building ('property') and on or about 5 May 2009, the appellant and the respondent through their respective representatives entered into discussion for the possible purchase of the property.

[4] Subsequent to the aforesaid discussion, the appellant through its solicitors sent a letter dated 7 May 2009 which for completeness reads as follows:

7th May 2009
YOUR REF :
IN REPLY PLEASE QUOTE :
OUR REF : KL/BK/R/201/09K

M/s. RamDipendra
No. 48-2, 2 nd Floor, BY FAX : 20957505
Jalan Medan Setia 2
Plaza Damansara,
Bukit Damansara
50490 Kuala Lumpur Attn: Mr. A Ramanathan

Dear Sirs

Re: Sale and Purchase of City Car Park, Jalan Masjid India owned by Haniffa Properties Sdn Bhd

JOBNAME: No Job Name PAGE: 6 SESS: 1 OUTPUT: Thu Dec 18 13:12:47 2014

We act for RIM ALLIANCE INC SDN BHD of No. 23, Jalan Melur 14, Taman Melur, 68000 Ampang, Selangor.

We together with the directors of our client met Mr. O.K. Mohamed Haniffa of M/s Haniffa Properties Sdn Bhd on 5/5/09 evening and discussed the purchase of the above mentioned property.

At the discussion it was agreed that our clients purchase the said property at the agreed purchase price of RM19,000,000.00 (Ringgit Malaysia Nineteen Million only).

We shall be glad to have the following:

1) A certified true copy of the title.

2) A resolution from M/s Haniffa Properties Sdn Bhd for the sale of the above property to our client at the purchase price of RM19 million.

3) A copy of Form 24 and 49 of the owners of the property.

4) Whether there is any existing bank loan on the said property and the balance payable, if any, or any other.

5) A copy of the tenancy agreements with the existing tenants.

6) Any other documents or information deemed necessary by your good selves.

We shall also be glad if you could be good enough to draft the sale and purchase agreement and forward same for our approval.

Thanking you in anticipation.

Yours faithfully,

[5] On the same day, the respondent through its solicitors replied to the appellant's letter which reads as follows:

Your Ref : KL/BK/R/201/09/K

Our Ref : 3-1010/0308/HPSB/ARN

Date : 7th May 2009

Messr BACHAN & KARTAR

Room 1, 4th Floor, Wisma Ann Koai (Old MCA Building)

67, Jalan Ampang, Kuala Lumpur

Attention: Mr. Gurbachan Singh

By FAX (03 20785632)/POST

STRICTLY SUBJECT CONTRACT

Dear Sirs,

SALE AND PURCHASE

JOBNAME: No Job Name PAGE: 7 SESS: 1 OUTPUT: Thu Dec 18 13:12:47 2014

Re: Property: FREEHOLD LAND MEASURING APPROXIMATELY 12,674 SQ.FT. WITH BUILDING KNOWN AS THE CITY CAR PARK, NO. 5 JALAN MASJID INDIA, 50100 KUALA LUMPUR

Owner : HANIFFA PROPERTIES SDN BHD

Purchase: RIM ALLIANCE INC SDN BHD

We refer to the above and your faxed letter dated 7th May 2009.

We have been instructed by our Client, Haniffa Properties Sdn Bhd, to reply your letter as follows:

(1) Our Client confirms that they are agreeable to sell the Property at a price of Ringgit Malaysia Nineteen Million (RM19,000,000.00) only ('Sale Price') subject to terms and conditions being agreed and a formal Sale and Purchase Agreement executed by the Parties.

(2) That your Client deposits with us, as stakeholders, an amount equivalent to 2% of the Sale Price as forfeitable Earnest Deposit.

(3) Upon compliance of paragraph 2 above, we shall forward you all relevant documents and proceed to prepare the Draft Sale and Purchase Agreement.

Meanwhile, kindly take note that this Property is held under Master Title, Geran 13137, Lot 10 Seksyen 40, Bandar Kuala Lumpur, Daerah Kuala Lumpur. We hope this would suffice for you to conduct the necessary checks.

If any further information is required, kindly contact the undersigned.

Thank you.

Yours faithfully,

Messrs Tengku Hishamudin RamDipendra

[6] The appellant on 19 May 2009 forwarded a cheque in the sum of RM380,000 (being 2% of the RM19,000,000) to the respondent's solicitors.

[7] Between 19 May 2009 and 1 July 2009, various correspondences were exchanged between the parties' respective solicitors. The essence of these correspondences concerns request for various documents required by the appellant's solicitors to conduct their due diligence exercise.

[8] On 9 July 2009, the appellant's solicitors informed the solicitors for the respondent that the appellant had deposited a cheque for the balance of the 10% deposit being 8% deposit of the purchase price. That letter reads as follows:

July 9, 2009

YOUR REF: KL/BK/R/201/09k

OUR REF:

JOBNAME: No Job Name PAGE: 8 SESS: 1 OUTPUT: Thu Dec 18 13:12:47 2014

M/s. Tengku Hishamudin
RamDipendra
No. 48-2, 2 nd Floor, BY FAX : 20957505
Jalan Medan Setia 2
Plaza Damansara,
Bukit Damansara
50490 Kuala Lumpur Attn: Mr. A Ramanathan

Dear Sirs

SALE AND PURCHASE

Re: Property: FREEHOLD LAND MEASURING APPROXIMATELY 12,674 SQ.FT. WITH BUILDING KNOWN AS THE CITY CAR PARK, NO. 5 JALAN MASJID INDIA, 50100 KUALA LUMPUR

Owner: HANIFFA PROPERTIES SDN BHD

Purchase: RIM ALLIANCE INC SDN BHD

We refer to our letter dated 30/6/2009 in respect of the above matter.

We write to inform you that our client has deposited with us a cheque for the balance of the 10% of the purchase price i.e. 8% of the purchase price.

2% of the purchase price was paid as earnest money to your goodselves.

We shall be glad to have the sale and purchase agreements and all the other relevant and necessary documents for our clients' execution as soon as possible.

Yours faithfully,

Bachan & Kartar

[9] On 10 July 2009, the respondent's solicitors forwarded four sets of the sale and purchase agreements and deed of assignment for the execution of the appellant. As there was no reply by the appellant or its solicitors, the respondent's solicitors on 17 July 2009, 23 July 2009 and 28 July 2009 wrote to enquire the status of the execution of the sale and purchase agreement and deed of assignment. An ultimatum was also given in that if the aforesaid documents are not executed it will forfeit the sum of RM380,000.

[10] The appellant's solicitors finally on 29 July 2009 replied to above queries and maintained that there is no binding agreement between the parties as the respondent had failed to supply the requested documents. Demand for the return of the deposit of RM380,000 was also made.

ISSUE FOR DETERMINATION

[11] We are of the considered view that there is one issue before us and it is this:

JOBNAME: No Job Name PAGE: 9 SESS: 1 OUTPUT: Thu Dec 18 13:12:47 2014

Whether in the context of the various correspondence between the parties there is a concluded agreement?

THE HIGH COURT DECISION

[12] The learned judge after examining the various documents found that there was a concluded agreement and her rationale can be found in this paragraph of her grounds of judgment:

> The earlier letters of the Plaintiff (exhibit OK-2, OK-3, OK-4, OK-5 of Enclosure 2) states 'subject to contract' However a perusal of the letter from the Defendant in exhibit OK-6 dated 9.7.2009 shows that the Defendant had unequivocably and unconditionally was ready to execute the Sales and Purchase Agreement. Nowhere in the letter did the Defendant states about any term or condition that is yet to be agreed upon or that any term or condition that is still under negotiation. Neither is there anywhere in the said letter does it state that it is 'subject to contract'. From the contents of this letter, it does not contemplate the execution of a further contract. The terms of the contract has reached its finality. I do not see anything here that infers that there is yet something more to be done to conclude the contract. To my mind, there has been a concluded bargain between the Plaintiff and the Defendant. The word 'subject to contract' in the earlier letters, in any event was no longer present in the subsequent letters especially letter dated 30.6.2009 (letter in exhibit OK-5), where the Defendant asked the Plaintiff to proceed with the Sale and Purchase Agreement for execution after being satisfied and had fully clarified with the terms and conditions.

OUR GROUNDS OF DECISION

[13] The legal principle applicable to the issue at hand is found in the case of *Ayer Hitam Tin Dredging Malaysia Bhd v YC Chin Enterprises Sdn Bhd* [1994] 2 MLJ 754 where Edgar Joseph Jr SCJ delivering the judgment of the Supreme Court said this:

> True it is that merely because the parties contemplate the preparation of a formal contract, that by itself will not prevent a binding contract from coming into existence before the formal contract is signed. It is not difficult to cite an anthology of cases for this proposition but we need no more than refer to *Von Hatzfeldt-Wildenburg v Alexander* [1912] 1 Ch 284 at pp 288, 289 where the Court said this:
>
> > It appears to be well settled by the authorities that if the documents or letters relied on as constituting a contract contemplate the execution of a further contract between the parties, it is a question of construction whether the execution of the further contract is a condition or term of the bargain or whether it is a mere expression of the desire of the parties as to the manner in which the transaction already agreed to will in fact go through. In the former case there is no enforceable contract either because the condition is unfulfilled or because the law does not recognize a contract to enter into a contract. In the latter case there

JOBNAME: No Job Name PAGE: 10 SESS: 1 OUTPUT: Thu Dec 18 13:12:47 2014

is a binding contract and reference to the more formal document may be ignored.

[14] The test set out by the then Supreme Court was adopted by the Federal Court in *Charles Grenier Sdn Bhd v Lau Wing Hong* [1996] 3 MLJ 327; [1997] 1 CLJ 625 and through the judgment of Gopal Sri Ram JCA (as he then was) added this:

> Although the judgment of Edgar Joseph Jr SCJ in *Ayer Hitam* contains all the learning upon the subject, we would for completeness, refer to the following passage to the joint judgment of Dixon CJ, McTiernan and Kitto J J in *Masers v Cameron* (1954) 91 CLR 353:
>
> > Where parties who have been in negotiation reach agreement upon terms of a contractual nature and also agree that the matter of their negotiation shall be dealt with by a formal contract, the case may belong to any of three classes. It may be one in which the parties have reached finality in arranging all the terms of their bargain and intend to be immediately bound to the performance of those terms, but at the same time propose to have the terms restated in a form which will be fuller or more precise but not different in effect. Or, secondly, it may be a case in which the parties have completely agreed upon all the terms of their bargain and intend no departure from or addition to that which their agreed terms express or implied, but nevertheless have made performance of one or more of the terms conditional upon the execution of a formal document. Or, thirdly, the case may be one in which the intention of the parties is not to make a concluded bargain at all, unless and until they execute a formal contract.
>
> > In each of the first two cases there is a binding contract: in the first case a contract binding the parties at once to perform the agreed terms whether the contemplated formal document comes into existence or not, and to join (if they have so agreed) in settling and executing the formal document; and in the second case a contract binding the parties to join in bringing the formal contract into existence and then to carry it into execution.

[15] It is our considered view that what is stated above by the learned justices is nothing more than a description of the courts' arduous task of seeking out the intention of the parties. Saville J in *Vitol BV v Compagnie Europeeme des Petroles* [1988] 1 Lloyds Rep 574 at p 576 puts, in our view, that task aptly:

> The approach of the English law to questions of the true construction of contracts of this kind is to seek objectively to ascertain the intentions of the parties from the words which they have chosen to use. If those words are clear and admit of only one sensible meaning, then that is the meaning to be ascribed to them — and that meaning is taken to represent what the parties intended. If the words are not so clear and admit of more than one sensible meaning, then the ambiguity may be resolved by looking at the aim and genesis of the agreement, choosing the meaning which seems to make the most sense in the context of the contract and its surrounding circumstances as a whole. In some cases, of course, having attempted this exercise, it may simply remain impossible to give the words any sensible meaning at all in

JOBNAME: No Job Name PAGE: 11 SESS: 1 OUTPUT: Thu Dec 18 13:12:47 2014

which case they (or some of them) are either ignored, that is to say, treated as not forming part of the contract at all, or (if of apparent central importance) treated as demonstrating that the parties never made an agreement at all, that is to say, had never truly agreed upon the vital terms of their bargain.

[16] We now apply the principles to the factual matrix before us. Our analysis starts with the first letter dated 7 May 2013 from the respondent's solicitors. It is not insignificant that the words 'STRICTLY SUBJECT TO CONTRACT' appear in that letter. These words clearly show that the intention of the respondent from day one is that for any agreement to come into effect there must be a formal agreement.

[17] Next we look at the first letter dated 5 May 2009 from the appellant's solicitors where it requested for documents as set out earlier. Again there is no problem for us to infer that the appellant's intention is simply until those documents are produced there is to be no concluded agreement.

[18] We have examined all the correspondences of the respondent's solicitors and have found that prior to 10 July 2009, all correspondences were marked with the phrase 'STRICTLY SUBJECT TO CONTRACT'. The letter dated 10 July 2009 by the solicitors of the respondent is a letter enclosing four sets of sale and purchase agreement and deed of assignment to the solicitors of the appellant. It is also in response to the letter of appellant's solicitors dated 9 July 2009 where it was informed that the appellant had deposited a cheque for the balance of the 10% deposit payment.

[19] It is the contention of learned counsel for the respondent that by virtue of the appellant's letter dated 9 July 2009, the negotiations have concluded in crystallising a concluded agreement.

[20] With respect we do not agree for the simple reason that that letter must be looked at in the context of all the other correspondences. It is undisputed that the appellant had from day one needed to be supplied with the documents set out in its first letter. It is common conveyance practice that any purchaser would be entitled to have any information relating to the property which are within the purview of the vendor. In fact the respondent in the letter dated 7 May 2009 gave an undertaking to the appellant that those documents will be supplied after the 2% earnest deposit is paid which of course had been paid.

[21] It is undisputed that only some of those documents were not given to the appellant and it is now the contention of the respondent that it will only supply the remaining documents after the sale and purchase agreement is executed. We find that contention to be a mere after thought and unreasonable in the context of a sale and purchase of a RM19,000,000 property.

JOBNAME: No Job Name PAGE: 12 SESS: 1 OUTPUT: Thu Dec 18 13:12:47 2014

[22] We also cannot understand as to why copies of the tenancy agreements were not supplied to the appellant. Any competent conveyance solicitors would have advised their clients that knowledge of the terms and conditions of tenancies is pivotal as to whether the sale and purchase agreement should be proceeded with. Disclosure in the draft sale and purchase agreement cannot be equated to supplying copies of the tenancy agreements. The appellant as a prospective purchaser must know the full terms and conditions of those tenancy agreements.

[23] Further we cannot find any evidence to infer that the supply of these documents had been waived by the appellant. In any event, as pointed out in the appellant's solicitors' letter dated 29 July 2009, there is dispute as to the completion period of three months as set out in the draft sale and purchase agreement and a change of mind by the respondent in supplying the requested documents only after the sale and purchase agreement is signed. These disputes only show that there still has not been any meeting of minds. One must bear in mind that this is a sale of a property no less than for a sum of RM19,000,000 between two parties of immense means and commercial experience. It is our considered view that no reasonable commercial enterprise would bind themselves until such time that a formal agreement had been executed as demanded by the respondent from day one with the phrase 'STRICTLY SUBJECT TO CONTRACT' endorsed in its correspondence.

[24] For reasons stated we find that there is no concluded agreement between the appellant and the respondent

CONCLUSION

[25] Accordingly we allowed the appeal with cost in the sum of RM20,000 for here and below. Deposit refunded.

Appeal allowed with the costs of RM20,000 for here and below.

Reported by Ashok Kumar